

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**



**ADVISORY OPINION NO. 168**

Advisory Opinion NO. 168 was issued in accord with an interim ruling. In this interim ruling, the Ethics Commission [Commission] advised that the City's Technical Review Committee [the Committee] may select an engineering firm [XYZ Corporation] as a consultant for a City agency in order to obtain the services of a former City officer [Mr. X] who had an exclusive personal service contract with XYZ Corporation.

The Commission believes that the Committee may do so under Section 6-1.3(e), Revised Ordinances of Honolulu 1978 (1983 Ed.) [ROH]. This section allows the City to hire a former officer within one year of termination of his employment without the officer satisfying the requirements of post-City employment restrictions in Sections 6-1.3(a)-(d). The Commission believes Section 6-1.3(e) is applicable because two years elapsed between the time when Mr. X entered into the exclusive service contract with XYZ Corporation and the time when the City needed his expertise after his resignation. This length of time and the facts upon which the Commission bases this opinion indicate no one intended that the City would need to select XYZ Corporation as a consultant in order to obtain Mr. X's services.

The Commission understands the facts to be as follows:

Mr. X founded XYZ Corporation and sold his shares in order to avoid the appearance of a conflict of interest between such ownership and his proposed City employment. As a condition of the sale, Mr. X also agreed to work exclusively for the firm, renamed XYZ Corporation, upon termination of his City employment, at some unknown future date.

In addition to his City appointment, Mr. X was cochair of a task force for a special project of the City for a certain period of time before resigning for personal reasons.

After resigning, Mr. X became a consultant to a City agency for a special project under an oral contract for a sum of less than \$9,000. Subsequently the agency submitted a written contract to the Committee with the recommendation that it select XYZ as consultant for the special project because Mr. X's expertise is essential to its successful completion.

The ethical question is whether the Committee may select a firm as a consultant when doing so is the only means to retain the services of a person who less than one year before was a City officer, whose expertise a City agency deems essential to one of its projects, and who has an exclusive personal service contract with the firm that predates his City employment.

The general rule is that for one year after termination of City employment, a former officer may not appear before any City agency or assist a business that employs him in any official City action without filing an affidavit declaring that he was not involved with the matter at hand when he was employed by the City. Section 6-1.3(a)-(d), ROH. The exception to this rule is that within that year a City agency may contract with a former officer and the former officer may appear before City agencies in relation to such employment. Section 6-1.3(e), ROH.

The primary example of the general rule is the situation that resulted in Advisory Opinion No. 155 [AO #155]. Less than one year after leaving City employment, a former employee filed an affidavit stating that she was an employee of Firm A and intended to represent Corporation B, a client of Firm A, before a City agency. The purpose of her appearance was to present an application that required City approval. In the affidavit, she stated that she had not been involved with this application while she was a City officer. She appeared before the City agency, and the Commission was asked to determine whether or not she had been involved with the matter the application concerned.

The Commission found that the former employee had supervised City personnel in their work in response to a series of events Corporation B initiated in attempts to change City policy. Her appearance before the City on behalf of Corporation B and its application was merely another event in Corporation B's efforts to change that policy. Therefore, her affidavit was not accurate because she had been involved in the matter of Corporation B's efforts when employed by the City.

The Commission distinguishes the facts of AO #155, discussed herein, from those concerning Mr. X. The general rule anticipates former officers or employees appearing before a City agency, as one did in AO #155, or asking former coworkers for help in their work on behalf of new employers. However, a private business did not hire Mr. X after he left City employment in order to use his knowledge of City officers, employees, or affairs for its own benefit. He entered into a contract for the sale of his shares of XYZ before he entered City employment and did so in order to avoid the appearance of a conflict of interest. He agreed to an exclusive service contract two years before he resigned for personal reasons. He agreed to lend his expertise to the completion of the special project because he deemed his expertise essential. Therefore, the general rule does not apply.

On the other hand, the Commission believes the exception does apply to Mr. X's situation. Section 6-1.3(e) allows the City to hire a former officer during the year in which the restrictions of the general rule apply. This section states:

This section shall not prohibit any agency from contracting with a former officer or employee to act on a matter on behalf of the City within the period of limitation stated herein and shall not prevent such officer or employee from appearing before any agency in relation to such employment.

This exception anticipates the situation when the City needs the services of a former officer or

employee, as the City needs Mr. X's expertise now. The only distinction between the anticipated situation and Mr. X's is that he agreed to an exclusive personal contract with XYZ as a condition of the sale of his stock. As a result, the City cannot obtain his services now for the special project without the Committee selecting XYZ as the consultant. This distinction is not sufficient, however, to require the City to forfeit Mr. X's services.

The Commission believes the standards of conduct permit the Committee to select XYZ in order to retain Mr. X because two years elapsed between Mr. X's exclusive personal service contract and the City's requiring his services after his resignation. This length of time indicates no one intended that the City would need to select XYZ in order to obtain Mr. X's services.

This opinion and AO #155 implicitly establish good faith on the part of the former officer or employee as an element of the standards of conduct concerning post employment. Therefore, in situations where City officers or employees enter into exclusive personal service contracts with private employers after this opinion is issued, the Commission will determine as a question of fact whether or not the former officer or employee the City wishes to hire has acted in good faith, as the Commission deems Mr. X has.

Although the Commission's jurisdiction does not extend beyond the standards of conduct, the Commission notes that no issues arise as a result of the oral contract with Mr. X. Section 13.401, ROH, provides formal procedures for consultant contracts in subsections 1 through 8 and two exceptions to such procedures in subsection 9. Subsection 9 states:

This article shall not apply to consultant contracts where (1) the compensation is less than \$10,000; or (2) the public exigency will not admit the delay incident to compliance with this article.

The first of the two exceptions cited above applies to the oral contract between the City agency and Mr. X because the contract's price term was less than \$10,000. Therefore, the contract is proper under these provisions in addition to being proper under the standards of conduct.

Date: March 17, 1987

JANE B. FELLMETH  
Chair, Ethics Commission